

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, APRIL MUNIZ, MARCUS  
MARTIN, NATALIE ROMERO, CHELSEA  
ALVARADO, JOHN DOE, and THOMAS  
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**MOTION FOR LEAVE TO DEPOSE INCARCERATED DEFENDANT**

Plaintiffs Elizabeth Sines, Seth Wispelwey, Marisa Blair, April Muniz, Marcus Martin, Natalie Romero, Chelsea Alvarado, John Doe, and Thomas Baker (“Plaintiffs”), pursuant to Rule 30(a)(2)(B), move the Court to grant Plaintiffs leave to depose Defendant James Alex Fields, Jr., who is presently incarcerated at the United States Penitentiary, Hazelton, West Virginia.

Rule 30(a)(2)(B) requires Plaintiffs to obtain leave of Court to depose Mr. Fields because he is confined in prison. The Court must grant the motion to the extent the deposition is consistent with Rules 26(b)(1) and (2). Fed. R. Civ. P. 30(a)(2). Rule 26(b)(1) allows a party to obtain discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Rule 26(b)(2) provides that the requested deposition must be within the limitations set by court order.

Plaintiffs are entitled to depose Mr. Fields, who is a defendant in this case. *Leve v. General Motors Corp.*, 43 F.R.D. 508, 511 (S.D.N.Y. 1967) (“Plaintiff does have the right,

however, to take the oral deposition of a party or witness before trial.”) (citing Fed. R. Civ. P. 26). *See also Kanas v. Guenther*, No. 5:05-CV-295-BO, 2006 WL 8438656, at \*3 (E.D.N.C. Jan. 6, 2006) (holding that plaintiff was entitled to depose defendants both in their individual and representative capacities). The deposition sought here is relevant and proportional to Plaintiffs’ action and does not exceed the limitations on depositions set forth in this Court’s Orders.

With this Court’s permission, Plaintiffs will arrange with staff at the United States Bureau of Prisons to depose Mr. Fields. Plaintiffs and undersigned counsel will comply with all appropriate guidelines imposed by the U.S. Marshalls Service and/or such other officials with jurisdiction with respect to the conduct of such deposition.

WHEREFORE, Plaintiffs respectfully request that the Court grant them leave to depose Defendant James Alex Fields, Jr., as set forth in this motion.

Dated: August 6, 2020

Respectfully submitted,

/s/ David E. Mills

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### CERTIFICATE OF SERVICE

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I further hereby certify that on August 6, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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